IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH
S.B. Civil Writ Petition No.6162/07
Omkar Meena Vs. State of Raj. & Ors.

30.08.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri S.K. Singodiya for petitioner.
Shri B.K. Sharma, Deputy Government Advocate for State.

The petitioner has in this writ petition challenged the notices dated 25.5.2005 and 31.7.2007 whereby the respondents are proceeding against the petitioner under Rule 23 of the Panchayat Raj Rules, 1996 read with Section 39(2) of Rajasthan Panchayati Raj Act, 1994 for declaring him disqualified to hold the post of Sarpanch, Gram Panchayat Mirjapura, Panchayat Samiti Lalsot, District Dausa on account of the fact

that he was not eligible to contest the election to the aforesaid office being disqualified as per one of the clauses of Section 19(l) of the Rajasthan Panchayati Raj Act, 1994.

Controversy raised in this case is squarely covered by the decision of Larger Bench in the case of Smt. Sameera Bano Vs. State of Raj. & Ors, D.B. Special Appeal (W) No.236/06, decided on 2.4.2007 wherein it was held as under:-

> "that a pre-election disqualification can be adjudicated only in an election petition before the District Judge under Section 43 of the Act read with rule 80 of the Election Rules and cannot be adjudicated by the authority under rule 23 of the Rules."

Following the view taken by the larger bench in Smt. Sameera Bano, supra,

the writ petition deserves to be allowed and is accordingly allowed. The impugned notices dated 25.5.05 & 31.7.2007 are quashed and set aside and the petitioner is held entitled to continue to hold the office of Sarpanch, Gram Panchayat Mirjapura, Panchayat Samiti Lalsot, Distt. Dausa.

(Mohammad Rafiq),J.

Rs/-